

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24 (1)

Chamber Ref: FTS/HPC/RT/21/2348

Title no: ELN9452

18 Caesar Way, Tranent, East Lothian EH33 2JA ("The Property")

The Parties:-

East Lothian Council, Protective Services, John Muir House, Haddington, East Lothian EH41 3HA ("the Third Party Applicant")

Ms Ailsa Rutherford, residing at 18 Caesar Way, Tranent, East Lothian EH33 2JA ("the Tenant")

Mr Thomas Aitken, residing at The Stables, Gladsmuir, Tranent, East Lothian EH33 1ED ("the Landlord")

Tribunal Members: Richard Mill (Legal Member) and Angus Anderson (Ordinary Member)

Decision

The property does not meet the Repairing Standard. The landlord has not complied with the duty imposed by section 14 (1) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary and is made.

Background

1. By way of application received on 21 September 2021, the third party applicant applied to the Tribunal for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act in respect of the property.
2. In the application the third party applicant states that the Landlord has failed to comply with his duty to ensure that the property meets the repairing standard in a number of respects. The relevant elements of

the repairing standard put at issue, as defined by section 13 of the Act, are those contained within section 13(1)(a), (c), (d), (f), (g) and (h):

- Whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
- Whether the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
- Whether any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
- Whether the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- Whether the house has satisfactory provision for giving warning if carbon monoxide is present at a concentration that is hazardous to health.
- Whether the house meets the tolerable standard.

3. Notices of referral were issued to parties on 20 October 2021.

Procedure

4. Under normal circumstances, the Tribunal would arrange for an inspection to be carried out early in the process. Due to the continuing effects of the Covid-19 pandemic, a Case Management Discussion (CMD) was arranged in order to discuss further procedure and to ascertain if an inspection was required.

5. Based upon the terms of the application and accompanying documents, the Tribunal issued a Direction dated 3 November 2021 which required the landlord to produce:-

- a current Electrical Installation Condition Report (EICR) from a SELECT, NICEIC or NAPIT accredited electrician in respect of the property, containing no Category C1 or C2 items of disrepair, which also refers to the provision for smoke and heat detection in accordance with Scottish Government guidance.
- a copy of the current Gas Safety Certificate from a registered Gas Safe engineer, for the property which refers to the provision for carbon monoxide detection.

- any other documentary evidence available in connection with the condition of the property and or work which has been undertaken on the property since June 2021.

The said documentation required to be lodged with the Chamber no later than 5pm on Wednesday 24 November 2021. No such documentation was produced.

6. Written representations were required to be made by 10 November 2021 but the landlord did not make any.
7. The CMD took place by teleconference on 29 November 2021 at 10.00 am. None of the parties participated in the hearing. The Tribunal decided that determination of the application could not be resolved in the absence of an inspection. A property inspection was subsequently arranged to take place on 1 February 2022 with a hearing arranged to take place on 8 February 2022.

Inspection 1 February 2022

8. The Tribunal inspected the property on 1 February 2022 at 10.00 am. The third party applicant had been invited, but chose not to send any representative. The landlord attended personally. The tenant allowed entry to the Tribunal members and the landlord for the purposes of the inspection.

Inspection Report

9. The Tribunal's inspection report and corresponding schedule of photographs, based upon the inspection conducted on 1 February 2022 was issued to parties for discussion at the hearing. The report was sent recorded delivery to the landlord who received that on 4 February 2022.

The Hearing

10. A hearing took place by teleconference at 10.00 am on 8 February 2022. The third party representative was represented by Mr Luke Anstock. The landlord and tenant both participated personally.

Summary of Issues

11. The issues to be determined by the Tribunal are whether or not the property meets the repairing standard to the extent put at issue within the application, as at the date of the hearing.
12. The application by the third party applicant was accompanied by copy documentation issued to the landlord on 11 June and 6 September 2021. This refers to an inspection carried out by East Lothian Council at the property on 1 June 2021 when it was concluded that the property did not meet the repairing standard under the Housing (Scotland) Act 2006 or the tolerable standard under the Housing (Scotland) Act 1987. The following issues were identified and narrated in the application:-
 - i. There was no satisfactory provision for the detection and warning of fires. A fire alarm fixed to the ceiling in the front room was found to be in a state of disrepair.
 - ii. There was no satisfactory provision for the detection and warning of carbon monoxide. A carbon monoxide detector purchased by the tenant was found to be positioned at a low level in a front room.
 - iii. It was identified that the boiler and gas fire have not been subject to a gas safety check performed by a qualified gas engineer throughout the duration of the current tenancy.
 - iv. There was no satisfactory provision for heating and the supply of hot water. The central heating system was not in a functioning state. There was no hot water being provided to the taps or circulating through the radiators in the flat. The gas fire in the living room was also found to be in an unusable condition.
 - v. There was no satisfactory provision for ventilation. Windows in both the living room and kitchen were stuck fast and were unable to be opened.
 - vi. The installation for the supply of electricity was found not to be adequate or safe for use or in a reasonable state of repair and in proper working order. There is no history of an electrical safety inspection or Electrical Installation Condition Report (EICR) having been prepared within the last 5 years.
 - vii. The property was found not to be wind and watertight. Wind enters through the property through a cracked window and an old appliance vent located at floor level in the living room.

- viii. Other fixtures and fittings provided under the tenancy were found not to be in a reasonable state of repair and in proper working order. The front door had sustained considerable damage due to a previous break in at the property. The bedroom window was noted to be broken and not capable of being locked. Both present a security risk. The outer pane of the bathroom window has been subject to an act of vandalism.

Findings in Fact

13. The Tribunal makes the following findings in fact:-

1. The title to the subjects known as 18 Caesar Way, Tranent, East Lothian EH33 2JA is held by the landlord. His interest is registered in the Land Register of Scotland under title number ELN9452 on 20 December 2010.
2. The property which is the subject of this application is a one bedroomed lower ground floor flat within a detached block of four flats.
3. The property consists of a hallway, living room, kitchen, bathroom, and one bedroom.
4. The tenancy commenced on 4 October 2009. The tenant has been unable to produce any written tenancy agreement. The monthly rental payments of £495 have remained ongoing and are currently paid by way of housing benefit payments.
5. The inspection conducted on 1 February 2022 revealed the following:-

Front Door

The outer flat door was noted to have split wood and a cracked glazed panel, held in place by duct tape. The door had a missing locking mechanism being part of the multipoint locking system. The door was capable of being secured but, given the amount of tape on the door holding it together, closing and locking the door is difficult. The door is beyond repair.

Hallway

On the hall ceiling there is a mounting plate for a smoke alarm which was not present. The hall cupboard houses the electrical consumer unit. Miniature circuit breakers (MCBs) were seen; no

residual current device (RCD) was noted; no labels showing a test date were noted; and the cover to the MCBs was missing.

Living Room

The Baxi central heating boiler is now disused and the gas fire was found to be condemned. A "Do Not Use" label had been affixed. The living room has two windows, a large and a small window, both of which consist of an upper and lower glazed pane. In the larger window there is cracked glazing to both the lower and upper panes. In the smaller window the handle is missing and does not close securely due to a warped casement. The fresh air vent previously required for the Baxi boiler/gas fire remains in situ at floor level and creates a draught. Mounting plates for a smoke alarm and carbon monoxide alarm were noted. No alarms were present.

Kitchen

The replacement central heating "combi" boiler was installed in the kitchen on 25 November 2021. The heating system and hot water were both noted to be in working order. A carbon monoxide alarm, fitted at the time of the combi boiler, affixed to the wall in the kitchen adjacent to the boiler was tested and found to be operational. No heat alarm was found within the kitchen. The kitchen window and ventilation fan were found to be operational.

Bedroom

The casement in the bedroom window was found to be warped and ill-fitting. The handle was loose. The window cannot be securely closed and can only be secured on the outer (ventilation) position.

Bathroom

The outer pane of the double glazed glass unit is badly broken. The mechanical ventilation fan was found to be inoperative.

14. Reference is made to the Tribunal's inspection report dated 2 February 2022 which is referred to for its terms.

Reasons for Decision

15. The Tribunal determined the application having regard to the bundle of papers which were made available, their findings at their inspection on

1 February 2022, and the representations made by all parties at the hearing.

16. The Tribunal is only able to consider the complaints which formed part of the intimated application and has an obligation to consider the complaints as at the date of the hearing.
17. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient evidence available to reach a fair determination of the application.
18. The Tribunal has principally based the decision that the landlord has not complied with his 'repairing standard' duties based upon the circumstances noted at the time of their inspection.
19. The landlord accepted the findings of the Tribunal in terms of the condition of the property as at the date of inspection conducted on 1 February 2022. The condition of the property, as at the date of hearing, remained as it had been as at the date of the inspection.
20. The landlord advised that a number of works required to bring the property up to the necessary repairing standard in terms of the Act were in the course of being instructed. He stated that it had been difficult to source tradesmen due to the ongoing effects of the covid-19 pandemic. He sought to excuse responsibility himself in a number of respects, referring to actions of the tenant and acts of vandalism by unknown third parties. Such matters are irrelevant. It is the landlord's responsibility, at all times, to ensure that the property meets the repairing standard as defined in section 13 of the Act.
21. It has been a requirement of the law for landlords to have operational smoke and carbon monoxide alarms in their let properties for many years. The landlord has flagrantly ignored this very serious requirement. The landlord has been well aware of the repairing issues at the property for some considerable time but he has been dilatory in his reaction to such matters.
22. The Tribunal noted that the landlord has instructed an electrician to attend at the property on 16 February 2022 to carry out all necessary electrical work. He is in the course of replacing all windows in the property with new white UPV double glazed units but could not confirm a date for installation. He advised the windows have been ordered. The only item of disrepair which the landlord did not accept was his responsibility to replace is the front door. The tenant paid an agreed sum of £500 by way of contribution to her landlord in January 2017 to replace the door after a break in. Despite this the landlord had not replaced the door. It is his clear responsibility to do so.

23. The condemned gas fire was provided as a heat source at the commencement of the tenancy. The tenant advised that she was not insisting upon this being replaced with a modern alternative and was happy to allow it to be removed and for the living room to be redecorated accordingly.
24. The Tribunal was satisfied that the property is not wind and watertight. A number of the windows are substandard as hereinbefore described. They are not wind and waterproof. The old air vent in the living room causes an unnecessary draught. This is a breach of section 13(1)(a) of the Act.
25. The Tribunal was not satisfied that installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order. The carbon copy gas safety certificate provided by the tenant at the time of inspection was not legible. The landlord has failed to produce a legible copy or an EICR as previously requested and directed by the Tribunal. This is a breach of section 13(1)(c) of the Act.
26. The Tribunal was satisfied that some of the fixtures in the house are not in a reasonable state of repair and working order. The front door is damaged in a number of respects and does not operate properly. The mechanical ventilation fan in the bathroom is inoperative. This is a breach of section 13(1)(d) of the Act.
27. The Tribunal was satisfied that the property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. This is a breach of section 13(1)(f) of the Act.
28. The Tribunal was satisfied that the property does not meet the 'tolerable standard'. The property is not fit for human habitation due to the risks which arise due to the absence of smoke and heat detection. This is a breach of section 13(1)(h) of the Act.
29. The Tribunal has issued a Repairing Standard Enforcement Order (RSEO) simultaneously which requires the landlord to carry out necessary works. This will be registered in the Land Register. Failure of the landlord to comply with that RSEO is a criminal offence.

Right of Appeal

30. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to

appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

31. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof these presents type written on this and the preceding page(s) are executed by Richard George Mill, solicitor, 69-71 Dalry Road, Edinburgh EH11 2AA, legal member of the tribunal at Edinburgh on 9 February 2022 before this witness:-

R.Mill

_____ Legal Member

Witness

Name

Address